

UNITED STATES COURT OF APPEALS
Filed 6/25/96
TENTH CIRCUIT

CALVIN BOLDING,

Plaintiff-Appellant,

v.

DENNIS LEONARD, Pastor;
PASTOR DAVE,

Defendants-Appellees.

No. 95-1421
(D.C. No. 95-S-1483)
(Dist. Colo.)

ORDER AND JUDGMENT*

Before **SEYMOUR**, Chief Judge, **KELLY** and **LUCERO**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R.

34.1.9. The cause is therefore ordered submitted without oral argument.

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions 10th Cir. R. 36.3.

Mr. Calvin Bolding filed this pro se action under 42 U.S.C. § 1983, alleging that defendants, both ministers with Heritage Christian Center, violated his First Amendment rights. The district court dismissed Mr. Bolding's complaint pursuant to 28 U.S.C. § 1915 (d). Mr. Bolding appeals,¹ and we affirm.

Section 1983 requires the plaintiff to “show that the defendant deprived him of [a] constitutional right ‘under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory.’ This . . . element requires that the plaintiff show that the defendant acted ‘under color of law.’” Adickes v. S. H. Kress & Co., 398 U.S. 144, 150 (1970); see also Pino v. Higgs, 75 F.3d 1461, 1464 (10th Cir. 1996).

Mr. Bolding stated in his complaint that neither defendant acted under color of state law. Mr. Bolding also stated in his complaint that he did not wish to assert jurisdiction under a statute other than section 1983. On appeal, Mr. Bolding again admits that neither defendant is a state actor. Because Mr. Bolding failed to meet this specific requirement of section 1983, we agree with the district court that his complaint must be dismissed.

¹ The district court granted *in forma pauperis* status to Mr. Bolding for appeal purposes.

We **AFFIRM** the judgment of the district court. The mandate shall issue forthwith.

SUBMITTED FOR THE COURT

Stephanie K. Seymour
Chief Judge